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NATIONALITY IN RELATION TO THE SUCCESSION OF STATES

Titles and texts of draft articles 1 to 18 on Nationality of natural persons in relation to the succession of States adopted by the Drafting Committee

Draft articles on Nationality of natural persons in relation to the succession of States *

PART I. GENERAL PRINCIPLES

Article 1 [1, paragraph 1]

Right to a nationality

Every individual who, on the date of the succession of States, had the nationality of the predecessor State, irrespective of the mode of acquisition of that nationality, has the right to the nationality of at least one of the States concerned, in accordance with the present draft articles.

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* The number within square brackets indicates the number of the corresponding article proposed by the Special Rapporteur in his Third Report.

Article 2 [footnote *]

Use of terms

For the purposes of the present draft articles:

(a) "succession of States" means the replacement of one State by another in the responsibility for the international relations of territory;

(b) "predecessor State" means the State which has been replaced by another State on the occurrence of a succession of States;

(c) "successor State" means the State which has replaced another State on the occurrence of a succession of States;

(d) "State concerned" means the predecessor State or the successor State, as the case may be;

(e) "third State" means any State other than the predecessor State or the successor State;

(f) "person concerned" means every individual who, on the date of the succession of States, had the nationality of the predecessor State and whose nationality may be affected by such succession;

(g) "date of the succession of States" means tne date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates.

Article 3 [2]

Prevention of statelessness

States concerned shall take all appropriate measures to prevent persons who, on the date of the succession of States, had the nationality of the predecessor State becoming stateless as a result of such succession.

Article 4

Presumption of nationality

Subject to the provisions of the present draft articles, persons concerned having their habitual residence in the territory affected by the succession of States are presumed to acquire the nationality of the successor State on the date of such succession.

Article 5 [3, paragraph 1]

Legislation concerning nationality and other connected issues

Each State concerned should, without undue delay, enact laws concerning nationality and other connected issues arising in relation to the succession of States consistent with the present draft articles. It should take all

appropriate measures to ensure that persons concerned will be apprised, within a reasonable time period, of the effect of its legislation on their nationality, of any choices they may have thereunder, as well as of the consequences that the exercise of such choices will have on their status.

Article 6 [3, paragraph 2]

Effective date

The attribution of nationality in relation to the succession of States shall take effect on the date of such succession. The same applies to the acquisition of nationality following the exercise of an option, if persons concerned would otherwise be stateless during the period between the date of the succession of States and the date of the exercise of such option.

Article 7 [4]

Attribution of nationality to persons concerned having their habitual residence in another State

1. Subject to the provisions of article 10, a successor State does not have the obligation to attribute its nationality to persons concerned if they have their habitual residence in another State and also have the nationality of that or any other State.

2. A successor State shall not impose its nationality on persons concerned who have their habitual residence in another State against the will of the persons concerned unless they would otherwise become stateless.

Article 8 [5]

Renunciation of the nationality of another State as a condition for attribution of nationality

When a person concerned entitled to acquire the nationality of a successor State has the nationality of another State concerned, the former State may make the attribution of its nationality dependent on the renunciation by such person of the nationality of the latter State. However, such requirement shall not be applied in a manner which would result in rendering the person concerned stateless, even if only temporarily.

Article 9 [6]

Loss of nationality upon the voluntary acquisition of the nationality of another State

1. A predecessor State may provide that persons who, in relation to the succession of States, voluntarily acquire the nationality of a successor State shall lose its nationality.

2. A successor State may provide that persons who, in relation to the succession of States, voluntarily acquire the nationality of another successor State or, as the case may be, retain the nationality of the predecessor State shall lose its nationality acquired in relation to such succession.

Article 10 [7/8]

Respect for the will of persons concerned

1. States concerned shall give consideration to the will of persons concerned whenever those persons are qualified to acquire the nationality of two or more States concerned.

2. Each State concerned shall provide for the right of option for its nationality by the persons concerned who have appropriate connection with that State if those persons would otherwise become stateless as a result of the succession of States.

3. When persons entitled to the right of option have exercised such right, the State whose nationality they have opted for shall attribute its nationality to such persons.

4. When persons entitled to the right of option have exercised such right, the State whose nationality they have renounced shall withdraw its nationality from such persons, unless they would thereby become stateless.

5. States concerned should provide a reasonable time limit for the exercise of the rights set forth in paragraphs 1 and 2.

[Article 8] [1]

[deleted]

Article 11 [9]

Unity of a family

Where the acquisition or loss of nationality in relation to the succession of States would impair the unity of a family, States concerned shall take all appropriate measures to allow that family to remain together or to be reunited.

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[1] Paragraphs 1 and 2 of article 8 appear as paragraphs 3 and 4 of article 10. Paragraph 3 of article 8 is deleted.

Article 12 [1, paragraph 2]

Child born after the succession of States

A child of a person concerned, born after the date of the succession of States, who has not acquired any nationality, has the right to the nationality of the State concerned on whose territory that child was born.

Article 13 [10]

Status of habitual residents

1. The status of persons concerned as habitual residents shall not be affected by the succession of States.

2. A State concerned shall take all necessary measures to allow persons concerned who, because of events connected with the succession of States, were forced to leave their habitual residence on its territory to return thereto.

[Article 11] [1]

[deleted]

Article 14 [12]

Non-discrimination

States concerned shall not deny persons concerned the right to retain or acquire a nationality or the right of option upon the succession of States by discriminating on any ground.

Article 15 [13]

Prohibition of arbitrary decisions concerning nationality issues

1. Persons concerned shall not be arbitrarily deprived of the nationality of the predecessor State or denied the right to acquire the nationality of the successor State, to which they are entitled in relation to the succession of States in accordance with the provisions of any law or treaty.

2. Persons concerned shall not be arbitrarily deprived of their right of option to which they are entitled in accordance with paragraph 1.

Article 16 [14]

Procedures relating to nationality issues

Applications relating to the acquisition, retention or renunciation of nationality or to the exercise of the right of option in relation to the

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[1] The drafting Committee decided to place the content of draft article 11 in the preamble to read as follows:

> Emphasizing that the human rights and fundamental freedoms of persons whose nationality may be affected by a succession of States must be fully respected.

succession of States shall be processed without undue delay and relevant decisions shall be issued in writing and shall be open to effective administrative or judicial review.

Article 14 [15]

Exchange of information, consultation and negotiation

1. States concerned shall exchange information and consult in order to identify any detrimental effects on persons concerned with respect to their nationality and other related issues regarding their status as a result of the succession of States.

2. States concerned shall, when necessary, seek a solution to eliminate or mitigate such detrimental effects by negotiation and, as appropriate, through agreement.

Article 18 [16]

Other States

1. Nothing in the present draft articles requires States to treat persons concerned having no genuine and effective link with a State concerned as nationals of that State, unless this would result in treating those persons as if they were stateless.

2. Nothing in the present draft articles precludes States from treating, for the purposes of their domestic law, persons concerned, who have become stateless as a result of the succession of States, as nationals of the State concerned whose nationality they would be entitled to acquire or retain, if such treatment is beneficial to those persons.

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NATIONALITY IN RELATION TO THE SUCCESSION OF STATES

Titles and texts of draft articles 1 to 18 on Nationality of natural persons in relation to the succession of States adopted by the Drafting Committee

Draft articles on Nationality of natural persons in relation to the succession of States*

Corrigendum

Article 3 [2], third line:

Replace the words "State becoming" with "State from becoming".

Article 5 [3, paragraph 1], third line:

Replace the words "the present draft" with "the provisions of the present draft".

Article 8 [5], first line:

Replace the word "entitled" with "who is qualified".

Article 10 [7/8], para. 2: should read:

"2. Each State concerned shall grant a right to opt for its nationality to persons concerned who have appropriate connection with that State if those persons would otherwise become stateless as a result of the succession of States."

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* The number within square brackets indicates the number of the corresponding article proposed by the Special Rapporteur in his Third Report.

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NATIONALITY IN RELATION TO THE SUCCESSION OF STATES

Titles and texts of draft articles (19 to 26) of Part II, text of a Preamble and the revised title of Part I of Nationality of natural persons in relation to the succession of States adopted by the Drafting Committee on first reading*

PART II. PROVISIONS RELATING TO SPECIFIC CATEGORIES OF SUCCESSION OF STATES

Article 19

Application of Part II

In giving effect to the provisions of Part I in specific situations, States shall take into account the provisions of Part II.

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* The number within square brackets indicates the number of the corresponding article proposed by the Special Rapporteur in his Third Report.

SECTION 1

TRANSFER OF PART OF THE TERRITORY

Article 20 [17]

Attribution of the nationality of the successor State and withdrawal of the nationality of the predecessor State

When part of the territory of a State is transferred by that State to another State, the successor State shall attribute its nationality to the persons concerned who have their habitual residence in the transferred territory and the predecessor State shall withdraw its nationality from such persons, unless otherwise indicated by the exercise of the right of option which all such persons shall be granted.

SECTION 2

UNIFICATION OF STATES

Article 21 [18]

Attribution of the nationality of the successor State

Without prejudice to the provisions of article 7, when two or more States unite and so form one successor State, irrespective of whether the successor State is a new State or whether its personality is identical to that of one of the States which have united, the successor State shall attribute its nationality to all persons who, on the date of the succession of States, had the nationality of a predecessor State.

SECTION 3

DISSOLUTION OF A STATE

[Article 19]
[deleted]

Article 22 [19/20]

Attribution of the nationality of the successor States

When a State dissolves and ceases to exist and the various parts of the territory of the predecessor State form two or more successor States, each successor State shall, subject to the provisions of article 23, attribute its nationality to:

(a) persons concerned having their habitual residence in its territory; and

(b) without prejudice to the provisions of article 7:

(i) persons concerned not covered by subparagraph (a) having an appropriate connection with a constituent unit of the predecessor State that has become part of that successor State;

(ii) persons concerned having their habitual residence in a third State, who were born in or, before leaving the predecessor State, had their last habitual residence in what has become the territory of that successor State or having any other appropriate connection of a similar character with that successor State.

Article 23 [21]

Granting of the right of option by the successor States

1. Successor States shall grant a right of option to all persons concerned covered by the provisions of article 22 who are qualified to acquire the nationality of two or more successor States.

2. Each successor State shall grant a right to opt for its nationality to persons concerned who are not covered by the provisions of article 22.

SECTION 4

SEPARATION OF PART OF THE TERRITORY

[Article 22]
[deleted]

Article 24 [22/23]

Attribution of the nationality of the successor State

When part or parts of the territory of a State separate from that State and form one or more successor States while the predecessor State continues to exist, a successor State shall, subject to the provisions of article 26, attribute its nationality to:

(a) persons concerned having their habitual residence in its territory; and

(b) without prejudice to the provisions of article 7:

(i) persons concerned not covered by subparagraph (a) having an appropriate connection with a constituent unit of the predecessor State that has become part of that successor State;

(ii) persons concerned having their habitual residence in a third State, who were born in or, before leaving the predecessor State, had their last habitual residence in what has become the territory of that successor State or having any other appropriate connection of a similar character with that successor State.

Article 25 [24]

Withdrawal of the nationality of the predecessor State

1. Subject to the provisions of article 26, the predecessor State shall withdraw its nationality from persons concerned qualified to acquire the nationality of the successor State in accordance with article 24. It shall not, however, withdraw its nationality before such persons acquire the nationality of the successor State.

2. Subject to the provisions of article 26, the predecessor State shall not withdraw its nationality from:

(a) persons concerned having their habitual residence in its territory;

(b) persons concerned not covered by subparagraph (a) having an appropriate connection with a constituent unit of the predecessor State that has remained part of the predecessor State;

(c) persons concerned having their habitual residence in a third State, who were born in or, before leaving the predecessor State, had their last habitual residence in what has remained part of the territory of the predecessor State or having any other appropriate connection of a similar character with that State.

Article 26 [25]

Granting of the right of option by the predecessor and the successor States

Predecessor and successor States shall grant a right of option to all persons concerned covered by the provisions of articles 24 and 25 who are qualified to have the nationality of both the predecessor and successor States or of two or more successor States.

PREAMBLE

The General Assembly,

Considering that problems of nationality arising from succession of States are of concern to the international community,

Emphasizing that, while nationality is essentially governed by internal law, international law limits the freedom of action of States in this field,

Recognizing that in matters concerning nationality, due account should be taken both of the interests of States and those of individuals,

Recalling that the Universal Declaration of Human Rights of 1948 proclaimed the right of every person to a nationality,

Recalling also that the International Covenant on Civil and Political Rights of 1966 and the Convention on the Rights of the Child of 1989 recognize the right of every child to acquire a nationality,

Emphasizing that the human rights and fundamental freedoms of persons whose nationality may be affected by a succession of States must be fully respected,

Bearing in mind the provisions of the Convention on the Reduction of Statelessness of 1961, the Vienna Convention on Succession of States in Respect of Treaties of 1978 and the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts of 1983,

Convinced of the need for the codification and progressive development of the rules of international law concerning nationality in relation to the succession of States as a means for ensuring greater juridical security in international relations,

Proclaims the following:

Title of Part I

PART I. GENERAL PROVISIONS